Supreme Court, U.S.
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No. .

IN THE

Supreme Court of the United States

OCTOBER TERM, 1999

JACK B. WILLIS

Petitioner,

v.

STATE BAR OF CALIFORNIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

CAROL A. SOBEL
Counsel of Record

LAW OFFICE OF CAROL A. SOBEL

100 Wilshire Boulevard, Suite 1000
Santa Monica, California 90401
(310) 393-3055

Counsel for Petitioner
JACK R. WILLIS

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QUESTION PRESENTED

1. Whether California Business & Professions Code section 6068(d), directing attorneys to refrain from doing other than "using means consistent with the truth in maintaining the causes confided in them and not to mislead a judge or judicial officer through the use of artifice or false statement," and which contains no scienter requirement, is impermissibly vague and overbroad in violation of the due process protections of the First and Fourteenth Amendments?

2. Whether California Business & Professions Code section 6068(d) is impermissibly applied to the conduct of an attorney who makes a misstatement of fact concerning a third party, to whom he has no fiduciary duty, outside the context of an adjudicative proceeding, which misstatement does not relate to any matter to be determined in the adjudicative proceeding and does not create a "substantial likelihood of material prejudice" to the adjudicative proceeding?

PARTIES TO THE PROCEEDING IN THE SUPREME COURT OF CALIFORNIA

The parties to the proceedings in the Supreme Court of California were as follows: Petitioner Jack R. Willis. The Respondent is the State Bar of California, which brought the complaint against Petitioner in the state disciplinary proceedings.

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JACK B. WILLIS

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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Petitioner Jack B. Willis respectfully prays that a writ of certiorari issue either to review the decision of the Supreme Court of California herein or, in the alternative, direct the California Supreme Court to review the decision below in light of this Court's precedents regarding the intersection of the First Amendment and extrajudicial

statements by attorneys in the practice of their profession.

OPINIONS BELOW

The Order of the California Supreme Court, denying petitioner's verified petition for review of the decision of the Review Department of the State Bar Court of the State of California is attached at Appendix A (App. A-1, 1a). The decision of the State Bar Court of the State of California is attached at Appendix A-2 (App. A-2 , 2a et seq.).

JURISDICTION

The Order of the California Supreme Court denying the Petition for Review was filed on July 28, 1999. (App. A-1, 1a). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

RELEVANT CONSTITUTIONAL AND RULE PROVISIONS

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right to the people peacably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV

All persons born or naturalized in the United States

and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

California Business & Professions Code § 6068(d)

California Business & Professions Code Section 6068(d) provides, *inter alia*, mandates an attorney:

> [t]o employ, for the purpose of maintaining the causes confided to him or her such means only as are consistent with the truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

STATEMENT OF THE CASE

A. Statement of the Facts

Petitioner is a member of the State Bar of California. In 1987, petitioner substituted in as counsel in a personal injury matter.[1] At the time that petitioner was asked to assume the representation, the client informed him that she was not satisfied with her prior attorneys, that they had failed to respond to her inquiries and that she believed that the prior

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1 App. A-2 at 3a.

firm had done little, if anything, regarding her case.

Petitioner notified his client's prior counsel that she had retained him to represent her and to provide him with the entire file. The file did not contain a fully executed copy of the settlement agreement.[2] At no time after being notified that their services had been terminated did the prior counsel inform petitioner, orally or in writing, that they intended to assert a lien for attorneys fees against any settlement.

Nearly three years later, in June 1990, Petitioner settled his client's claim. At the time, the insurance company initially issued the settlement draft jointly to Petitioner, the client, and the original firm which had represented her.[3] Upon receiving the settlement draft, Petitioner contacted the attorney for the insurer, requesting that the check be reissued in the name of Petitioner and his client, only. He then sent a letter to the insurer's attorney, setting forth several reasons why the check could, properly, be issued solely to petitioner and his client.

The reasons included that there had been no advisement of a lien and that the original firm had not produced an accounting of its time and costs incurred in representing his client and, finally, that Petitioner believed that the prior firm had gone through a bankruptcy proceeding

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2 App. A-2 at 3a.

3 App. A-2 at 3a.

several years earlier and the fee, if any, would have been discharged and was no longer due.[4] Petitioner advised the counsel for the insurance company that, if necessary, he would indemnify the insurance company against any claim by the prior attorneys.[5]

Shortly thereafter the settlement check was issued and disbursed between the client and Petitioner. Nearly two years later, Petitioner was contacted by the prior firm representing his client in this matter, advising him that they were entitled to fees in the matter and that, contrary to Petitioner's belief, they had never been in bankruptcy proceedings. Petitioner then apologized for the mistake about the bankruptcy, requested that the attorney provide him with an accounting of all costs and time in the matter and agreed to see that they were compensated for all reasonable time spent. Petitioner made the request for time and hours more than once, without success.[6] Rather than provide such time, the prior attorney

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4 App. A-2 at 3a and App. B-1 at 17a-18a. Petitioner formed his conclusion regarding the bankruptcy based on a statement made to him by his client's original attorney in October, 1987, during a deposition in another case and approximately six months after he substituted in as counsel in this matter. App. A-2 at 4. Petitioner assumed, incorrectly, that when the other attorney used the term "liquidation" to describe the dissolution of his prior firm, he was using the term as it is used in Chapter 7 of the federal Bankruptcy Code, 28 U.S.C. § 700 et seq.

5 App. B-1 at 18a.

6 App. B-2 at 19a. In the letter of September 17, 1992, Petitioner stated that, if the prior attorney did not provide the itemization of what he now claimed was due, petitioner would take "appropriate legal action."

filed a complaint with the State Bar and initiated a legal action against Petitioner for the disputed fees.

On October 14, 1994, the State Bar issued a Notice to Show Cause, charging Petitioner with making a false statement about his client's prior attorney, thus committing an act of moral turpitude in violation of California Business & Professions Code section 6106.[7] On October 16, 1996, two days before the start of the trial in this matter on October 18, 1996, the State Bar complaint against Petitioner was amended, now charging him with a violation of California Business & Professions Code Section § 6068(d) for failing "to use means consistent with the truth," which violation was then used to form the basis of the showing of moral turpitude underpinning the violation of California Business & Professions Code § 6106.[8] In issuing its ruling, the State Bar Court noted that Petitioner had preserved his constitutional

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Id. This statement was disapproved by the State Bar judge. App. A-2 at 5a.

7 California Business & Professions Code Section 6106 provides, in pertinent part, that:

> The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes cause for disbarment or suspension.

8 App. A-2 at 6a.

argument on the record for later appeal.[9]

B. The Decision of the State Bar Court

The decision of the state bar judge necessarily rests on that court's conclusion that Petitioner's assertion that there was no retainer agreement between his client and her former counsel was "hypertechnical," despite the unequivocal provisions of California Business & Professions Code section 6147, establishing express criteria for the execution of valid retainers in contingency fee cases and holding that the failure to meet any of the enumerated criteria makes the entire retainer agreement voidable at the discretion of the client.[10]

Based on a finding that Petitioner's single statement regarding the bankruptcy of his client's prior attorneys was evidence of "gross negligence" involving "moral turpitude"

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9 App. A-2 at 9a.

10 California Business & Professions Code section 6147 provides, *inter alia*, that, in a case in which a retainer agreement is based on a contingent fee contract, the retainer must be in writing, completed in duplicate, and signed by both the attorney and the plaintiff. The explicit effect of noncompliance is to make the contract voidable at the sole discretion of the client, with any fees based on *quantum merit*. Bus. & Prov. Code § 6147(a)(b). Stats. 1982, c.415, p. 1761 § 2. It is undisputed in this case that the only retainer agreement in the file when it was received by petitioner was signed solely by the client and there is no claim here that there ever was any fully executed contingency fee agreement in this instance. The State Bar Court, nonetheless, characterized petitioner's contention that there was no proper retainer as "hypertechnical." App. A-2 at 7a.

because it breached Petitioner's alleged fiduciary relationship with his client's original attorney,[11] Petitioner was ordered suspended from the practice of law for one year, with the actual term of suspension of 60 days, probation for a period of two years, and was also ordered to reimburse the Bar for costs of the disciplinary proceeding, and meet several other conditions regarding periodic reporting requirements during the period of probation and compliance with professional responsibility requirements.[12] Petitioner's request to the California Supreme Court for review of the State Bar Court decision was denied on July 28, 1999.[13]

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11 App. A-2 at 7a.

12 App. A-2 at 12a-15a, modified at A-1.

13 App. A-1.

REASONS FOR GRANTING THE WRIT

This petition arises out of the imposition of discipline on an attorney for moral turpitude based on an extrajudicial statement that was held to violate a provision of California's Business and Professions Code, which creates a duty for attorneys "[t]o employ, for the purpose of maintaining the causes confided to him or her such means only as are consistent with the truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law." *California Bus. & Prof. Code § 6068(d).* The statement in the case at bar concerned a third party and was made in a letter to counsel for an insurance company following a settlement having been reached in the underlying case.

The Constitution imposes limits on the authority of courts and other disciplinary authorities to punish attorneys for their extrajudicial statements. Rules by which courts seek to regulate the conduct of attorneys in the practice of their profession are subject to First Amendment limitations, even when the attorney swore to obey the regulations when admitted to practice law. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1048-1051 (1991) (majority opinion on Section III). Thus, attorney rules of professional conduct, as with other court rules, must conform to constitutional standards. In this instance, the discipline of appellant cannot withstand scrutiny under any established basis for restricting or punishing expression by attorneys in the course of their representation of a client.

This Court has held that an attorney's extrajudicial

statements may not form the basis of a disciplinary action unless the attorney "knew or should of known his remarks created a substantial likelihood of material prejudice" to an adjudicative proceeding. *Gentile*, 501 U.S. at 1038. In the case at bar, the state court's discipline rested on a rule that does not incorporate Gentile's standard, leading to the erroneous conclusion that appellant's statement concerning the "bankruptcy" of the prior counsel for his client violated California Business & Professions Code section 6068(f) and, thereby, constituted an act of moral turpitude, in violation of the provisions of Business & Professions Code section 6106. The only "prejudice" the State Bar Court identified was to the original attorney's right to assert his lien,[14] which he failed to do for the three years prior to Petitioner's statement of his belief concerning a bankruptcy. This purported "harm" does not substitute for a requirement of a "substantial likelihood of material prejudice" to an adjudicative proceeding, as required by this Court's decisions.

I. BUSINESS & PROFESSIONS CODE SECTION 6068(d) IS UNCONSTITUTIONALLY VAGUE

California Business & Professions Code section 6068(d), unchanged since it was adopted six decades ago, subjects an attorney practicing law in California to disciplinary action if s/he fails "[t]o employ, for the purpose of maintaining the causes confided to him or her such means only as are consistent with the truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law." *California Business & Professions*

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14 App. A-2 at 10a.

Code § 6068(d). This provision violates long-standing, fundamental rules of First and Fifth Amendment jurisprudence. The statute employs impermissibly vague terms, which have never been subjected to a limiting interpretation by the California courts and which cannot be saved by a narrowing construction.

The expansive language of the statute supports a finding that it may not be found to be narrowly-tailored to serve any possible interest the State might assert, including a legitimate interest in deterring attorneys from misrepresenting matters before the courts and judicial officers. The decision of the State Bar Court contravenes decisions of this Court, which have established a threshold burden the government must meet before it my discipline an attorney for his or her extrajudicial statements.

California Business & Professions Code section 6068(d) violates the due process protections of the First and Fourteenth Amendments because it fails to define adequately what conduct it prohibits and identifies the category of proscribed expression in terms so inherently vague that it gives the reasonable person no adequate opportunity to know what statements or "means" are permitted and what are prohibited and where First Amendment expression is limited for attorneys.

Because this regulation directly impacts on protected expression, the vagueness must be even more stringently measured. This Court has long held that "stricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech[.]" *Winters v.*

New York, 333 U.S. 507, 509 (1948). This rule was reiterated by this Court in *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 499 (1982), wherein the Court opined that "perhaps the most important factor affecting the clarity that the Constitution demands [is] whether [a regulation] threatens to inhibit the exercise of constitutionally protected rights . . . . If, for example, the law interferes with the right of free speech or association, a more stringent vagueness test should apply" to evaluate the permissible reach of the particular regulation.

Due process requires that a statute be sufficiently clearly defined so as not to cause persons "of common intelligence ... necessarily [to] guess at its meaning and [to] differ as to its application." *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926); *see also Kolender v. Lawson*, 461 U.S. 352, 357-58 (1983). "Laws that have failed to meet [the constitutional] standard are, almost without exception, those which turn on language calling for the exercise of subjective judgment, unaided by objective norms." *NAACP v. Button*, 371 U.S. 415, 466 (1963) (Harlan, J., dissenting). A statute fails this constitutional standard when, given its terms or grammatical structure, the statute fails to provide "fair notice to those to whom it is directed" and lacks sufficient guidelines for the discharge of official discretion such that it then chills the exercise of protected speech, and promotes arbitrary or content-based enforcement. *Gentile*, *supra* at 906-08.

This Court has repeatedly affirmed the three concerns embodied in the constitutional prohibition on vague regulations in the areas affecting freedom of expression:

"Vague laws may trap the innocent by not providing fair warning. . . . A vague law impermissibly delegates basic policy matters . . . for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. "Uncertain meanings inevitably lead citizens to `steer far wider of the lawful zone' . . . than if the boundaries were clearly marked." *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

California Business & Professions Code section 6068(d) offends all three concerns regarding a vague law. By failing to provide any definition of the conduct included within its reach, the statute fails to give notice to attorneys of precisely what conduct is proscribed by the law. Moreover, any fair reading of the statute compels the conclusion that a violation of this provision necessarily requires a finding that the mandate to "employ means consistent with the truth" applies to statements made to judges and judicial officers, not insurance company lawyers when the statement is not so obviously false and does not suggest an attempt by an attorney to suborn perjury, deliberately falsify evidence, or engage in similar conduct for the purpose of intentionally misleading the facts of a case.

The second clause of §6068(d) might provide a "safe harbor" for what would otherwise be an impermissibly vague law by narrowing its scope to statements made to a judge or judicial officer. California courts do not so read it and without this "safe harbor," virtually any statement an attorney made, whether oral or written, would open the advocate up to discipline if the statement were later determined to evince use of a "means inconsistent with the truth."

The term "means . . . consistent with the truth" also manifests the second infirmity of a vague law, as established by this Court in *Grayned* and its progeny. Because section 6068(d) employs, yet fails to define, an inherently vague term, it invites subjective and arbitrary application. Disciplinary authorities are unrestrained in their opportunity to substitute their own subjective judgments about the meaning of the section and what statements are not protected and are sufficient to invoke the disciplinary process.

This Court recently reiterated the concern with eliminating the impermissible risk of such selective application inherent in vague laws regulating expression in *Gentile*. "The question is not whether discriminatory enforcement occurred here, and we assume it did not, but whether the Rule is so imprecise that discriminatory enforcement is a real possibility." 501 U.S. at 1051.

Nothing in Section 6068(d) or in case law provides any guidance to attorneys who wish to conform their professional conduct to the requirements of this provision. Absent some common meaning in this statute, each judge and disciplinary authority is free to employ an individual and differing interpretation of what is a "means [in]consistent with the truth," which would support a violation of this section. Petitioner may not constitutionally be subjected to discipline under such a subjective procedure.

The third offense of a vague law is that it necessitates that persons establish a broad zone around the area of forbidden expression to avoid violating the statute. Other than the command of the second clause of §6068(d), which is

most reasonably construed to mean that an attorney is forbidden from lying, whether by oral or written submissions and whether by omission or commission, to a court or judicial officer, this provision contains no principles to guide the analysis of how a lawyer's expression should be self-restrained by the statute. Absent some clear indication of what the statute prohibits, attorneys risk discipline each time they speak if some court or other disciplinary authority concludes that his or statements or writings do not evince a "means consistent with the truth." While "[o]ne might perhaps make some educated guesses as to the meaning of [this statute] . . . one could never be confident that [the courts and the Bar] would agree." *Bullfrog Films v. Wick*, 847 F.2d 502, 513 (9th Cir. 1988).

The lack of careful definitions in this instance increases the likelihood that attorneys will engage in self-censorship to avoid disciplinary penalties, like those imposed on Petitioner. This is precisely the vice condemned by this Court as an impermissible result of a vague law.[15] In sum, the term "employ means consistent with the truth" is precisely the type of unintelligible term that invokes the Court's concern with vague laws.

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14 The fact that some of the conduct prohibited by this statute may be within the legitimate regulatory authority of the state does not somehow save the statute. A statute that prohibits protected speech is not saved simply because it also forbids unprotected speech and could be applied to the latter. *Secretary of State v. Joseph H. Munson, Co.*, 467 U.S. 974, 964-968 (1984); *Smith v. Goguen*, 415 U.S. 566 (1974).

II. SECTION 6068(d) IS AN OVERBROAD LAW THAT RESTRICTS A SUBSTANTIAL AMOUNT OF PROTECTED SPEECH

This Court has repeatedly stated that "First Amendment freedoms need breathing room to survive." *NAACP v. Button*, 371 U.S. at 432-33. To ensure such "breathing room," this Court has permitted individuals to bring challenges to a government regulation on the grounds that is overbroad, even if a more narrowly drawn law would be facially apt to the petitioner's speech, and the law may, nonetheless, be held unconstitutional if it applies to a substantial amount of protected speech. *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973).

The overbreadth in Section 6068(d) is unquestionable in light of the statute's unqualified command to employ only those "means consistent with the truth," regardless of the circumstances in which the speech occurs. Thus, any statement shown to be false would subject an attorney to liability, even if the speech were extrajudicial, and even if it concerned a matter of public concern. *See e.g. Gentile*, 501 U.S. 1030.

The statute also applies without regard for whether the expressive "means" determined to be *inconsistent* with the truth is intentional or not. The absence of an intent requirement places this rule of professional conduct at odds with this Court's First Amendment jurisprudence, which prohibits punishment of protected speech without evidence of specific intent. *See e.g. Scales v. United States*, 367 U.S. 203, 229-230 (1961).

This Court has held that a substantially overbroad restriction on speech will be declared facially invalid unless it is "fairly subject to a limiting construction." *Board of Airport Comm'rs v. Jews for Jesus, Inc.*, 482 U.S. 569, 577 (1987). The decisions of this Court also have held that federal courts may not apply a limiting instruction that the state has expressly declined, despite having opportunities to do so. *See City of Houston v. Hill*, 482 U.S. 451, 469-70 & nn. 18-20 (1987). California has rejected Petitioner's contention that the second clause of § 6068(d) must be read as a restraint on the phrase "means consistent with the truth" and applied this statute a manner that construes it as two independent clauses, having no necessary limiting relationship with each other.

III. THERE IS NO SAVING CONSTRUCTION LIMITING THE STATUTE'S REACH

More than half a century ago, this Court held in *Pennekamp v. Florida*, 328 U.S. 331 (1946) that a term which might otherwise suffer from the "vice of uncertainty" is, nonetheless saved from unconstitutionality based on limiting constructions drawn from the term's repeated application by the courts. *Id.* at 334. This Court has applied a similar analysis to state regulations that violate due process principles. In *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942), this Court upheld a state statute that employed inherently vague terms (i.e. "fighting words") because the narrowing construction placed upon the otherwise vague language by the state Supreme Court prevented the statute from being applied in a manner that violated the First

Amendment. Absent such a limiting interpretation by state authorities, this Court has repeatedly reaffirmed the principle that it "will not rewrite a . . . law to conform it to constitutional requirements." *Reno v. American Civil Liberties Union*, 521 U.S. 844, 884-85 (1997).

In this instance, there is no decision of the California appellate courts that has considered the constitutionality of this provision or has imposed any limiting construction on this statutory provision. In the case at bar, the Court has before it a decision of the State Bar Court of California, construing this provision in a manner that simply affirms its unconstitutionality. The State has understood this provision to apply to negligent misstatement of fact in a circumstance involving a letter to an insurer regarding the failure of a third party attorney to assert a lien over the course of three years, in which letter Petitioner provided as but an alternative basis for reissuing a settlement check only in the name of Petitioner and his client, Petitioner's belief that the third party had gone through a bankruptcy, which would have discharged the lien, if one even existed under California law.

As written, and as now authoritatively construed by the State Bar of California, the provision would put attorneys at risk of violating the rule anytime they make a statement that is judged to be "inconsistent" with the truth, regardless of whether it is otherwise constitutionally protected speech as an expression of opinion or speech on a matter of public concern. *See e.g. Gentile*, 501 U.S. 1030; *Wood v. Georgia*, 370 U.S. 375, 393 n.18 (1962). Indeed, by its plain terms, California's Rule readily sweeps within its ambit speech concerning pending litigation by lawyers, which rests at the

top of the First Amendment hierarchy. This Court has repeatedly declined to sanction speech regulations based solely on the status of the speaker. *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92 (1972).

Although the State has a substantial interest in protecting the integrity of the judicial process,[16] which would support discipline of attorneys who undermine that interest by deliberately submitting, or failing to bring awareness to, known false statements, whether through suborning perjury, filing false documents, or similar intentional acts aimed at misleading judges and judicial officers in a particular adjudicative proceeding, there is no way in which the State Bar can demonstrate that its broad interpretation and application of 6068(d) to *any* attorney statements that are purported to evidence something other than "means consistent with the truth" imposes a limitation on presumptively protected expression that is no greater than necessary to protect its asserted interests. *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 786 (1978).

Nor can 6068(d) be saved by reading the statute to require an "intent" to "employ means [in]consistent with the

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15 Although the speech in *Gentile* involved core political speech, this Court has repeatedly declined to assign less protection to attorney speech under the First Amendment when it concerns an ordinary commercial transaction. Court has held that, consistent with the First Amendment, the State has no legitimate interest in prohibiting attorney speech to promote "professionalism." *Bates v. State Bar of Arizona*, 433 U.S. 350, 364 (1977).

truth."[17] Although the vagueness inherent in the statute's first clause is only exacerbated by the absence of any requirement of "intent" in 6068(d), as a general rule, "a scienter requirement cannot eliminate vagueness . . . if it is satisfied by an `intent' to do something that is in itself ambiguous." *Nova Records, Inc. v. Sendak*, 706 F.2d 782, 789 (7th Cir. 1983). If, in this instance, the necessary showing of "scienter" means something other than an intent to " seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law," which it must because otherwise the first clause of 6068(d) would be rendered superfluous and a nullity, than the statute is not saved by importing a requirement of "scienter."

IV. BUS. & PROF. CODE SECTION 6068(d) IS UNCONSTITUTIONAL AS APPLIED TO PETITIONER IN THE CASE AT BAR

Even if Business & Professions Code section 6068(d) is not held to be unconstitutionally vague and overbroad on its face, it is unconstitutional as it is applied in this instance

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17 In determining whether attorneys are guilty of contempt of court, similar restrictions regarding "intent" have been required. Thus, for example, in *Hawk v. Cardoza*, 575 F.2d 732, 734-35 (9th Cir. 1978), the Court applied the First Amendment in a criminal contempt proceeding against a criminal defense attorney, holding that it must balance the attorney's First Amendment rights against the need for judicial order. Similarly, in *Weiss v. Burr*, 484 F.2d 973, 980-82 (9th Cir. 1973), *cert denied*, 414 U.S. 1161 (1974), the Court required a showing of intent to obstruct in a case involving a prosecutor accused of contempt. Bus. & Prof. Code § 6068(d) does not contain the scienter requirement of *Hawk*, *Weiss* and *Gentile*.

to the solitary statement of Petitioner in a letter to the attorney for the insurer regarding the purported bankruptcy of another law firm. This Court has recognized that, even a rule that is facially valid may be applied "irrationally, invidiously or arbitrarily,"thereby violating constitutional protections. *Brown v. Glines*, 444 U.S. 348, 357 n.15 (1980) (citation omitted).

This Court has the "duty of examining the evidence to see whether it furnishes a rational basis for the characterization put on it by the [State Bar] court." *In the Matter of Disciplinary Proceedings Against Harriet Bouslog Sawyer*, 360 U.S. 622, 628 (1959). *In re Sawyer* establishes that the state court, in this instance, exceeded the constitutional limits on its ability to impose sanctions. This Court overturned the disciplinary order in *Sawyer* and held that there was no rational basis on which the lower court's "findings" could be found to support the order. The same result is compelled in this instance.

This Court has held that the First Amendment requires there be facts demonstrating a "substantial likelihood of material prejudice" to an adjudicative proceeding in order for a lawyer to be disciplined for extrajudicial statements. *Gentile*, 501 U.S. at 1075; *accord*, *United States v. Wunsch*, 84 F.3d 1110, 1117 (9th Cir. 1995) (discipline for extrajudicial statements require a showing of "substantial likelihood of material prejudice"); *Standing Comm. On Discipline v. Yagman*, 55 F.3d 1430, 1442, 1443 (9th Cir.1995) (same).

The decision of the Ninth Circuit in *Wunsch* is

particularly instructive in this case. In *Wunsch*, the Circuit held unconstitutional a related provision, California Business & Professions Code section 6068(f).[18] Responding to the State Bar's argument that 6068(f) has been sufficiently narrowly construed by the California case law, the Circuit found that there was not "a single controlling decision – much less a clear line of authority – that either specifically discusses the scope of section 6068(f) or explicitly limits its applicability to, *e.g.*, courtroom interactions." *Id.* at 1118. The same situation exists in this instance. There is not a single decision of the California appellate courts authorizing 6068(d) to be applied as broadly as the State Bar Court has applied it in this instance. [19]

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15 Business & Professions Code § 6068(f) requires attorneys:

> To abstain from all offensive personality, and to advance no fact prejudicial to the honor and reputation of a party or witness, unless required to do so by the justice of the cause with which he or she is charged.

16 California reported decisions have all applied § 6068(d) to circumstances where an attorney knowingly engaged in a misrepresentation of a material matter, whether through an act of commission or omission. Thus, attorneys have been found to have violated 6068(d) where they combined damages from two separate actions against different defendants to increase the amount of a recovery (*Scofield v. State Bar of California,* 62 Cal.2d 624, 401 P.2d 217 (1965); advised a client to execute a fictitious mortgage chattel to help prevent the client's wife from obtaining a levy on the property (*Galbraith v. State Bar of California*, 218 C. 329, 23 P.2d 291 (1933); filed a verified answer to a malpractice complaint, which contained affirmative misrepresentations, thereby intending to mislead the Court (*Davis v. State Bar of California*, 33 C.3d 231, 655 P.2d 1276 (1983); used a pre-signed verification in discovery proceedings without first having the client

The problems inherent in the application of § 6068(d) to punish Petitioner's statement are only enhanced when this finding is then used as a basis for finding that Petitioner committed an act of "moral turpitude." California appellate courts have construed the term "moral turpitude," as it used to apply to attorneys in Business & Professions Code § 6106, in accord with its common law meaning of "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." *In re Fahey*, 505 P.2d 1369 (1973). Acts done by an attorney through ignorance or mistake, as here, are not evidence of moral turpitude. *Call v. State Bar of California*, 287 P.2d 761, 765 (1955). "[B]eing based on moral guilt, it implies an intentional breach of the duty owed to a client as distinguished from an unintended failure to discharge his duties to the best of his ability." *Id.* at 764. There is no charge, let alone any evidence, that Petitioner, in any manner, intentionally breached a duty owed to his client in this case. For this reason, the single statement upon which discipline rests in this case is insufficient to support discipline based on an act of moral turpitude. Although Petitioner might have investigated to ascertain whether, in fact, the prior attorney meant bankruptcy when he used the term "liquidation" in

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review the discovery responses for accuracy (*Drociak v. State Bar*, 52 Cal.3d 1085, 804 P.2d 711 (1991). In each of these cases, the effect of the attorneys' written and oral expressions, including failures to make such expressions where required, directly and substantially prejudiced the administration of justice. Notwithstanding the fact that there is no such comparable conduct in the instant case, the California State Bar has determined that Petitioner's expression is punishable under § 6068(d).

reference to a prior corporate legal entity, his failure to do so in this case does not mean that he violated his obligations to his client and the courts as an attorney.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Carol A. Sobel
LAW OFFICE OF CAROL A. SOBEL
100 Wilshire Boulevard
Suite 1000
Santa Monica, California 90401

Counsel for Petitioner, Jack R. Willis

APPENDIX A-1

APPENDIX A-1

S077493

SBC No. 94-O-17879

IN THE SUPREME COURT OF CALIFORNIA

IN RE JACK R WILLIS ON DISCIPLINE

Petition for writ of review is denied.

It is ordered that **Jack R. Willis** be suspended from the practice of law for one year, that execution of suspension be stayed, and that he be placed on probation for two years on condition that he be actually suspended for sixty days. He is also ordered to comply with the other conditions of probation recommended by the Review Department of the State Bar Court in its opinion filed September 28, 1998. It is further ordered that he take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Costs are awarded to the State Bar pursuant to Business and Professions Code section 6086.10.

GEORGE
Chief Justice

July 28, 1999

APPENDIX A-2

APPENDIX A-2

STATE BAR COURT

STATE BAR OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No. 92-O-17879-NRL
	)	
JACK R. WILLIS,	)	DECISION
	)	
No. 43789,	)	
	)	
A Member of the State Bar.	)	
	)	

INTRODUCTION

This decision results from a hearing held October18,1996, and January 14, 1997, at the State Bar Court in Los Angeles, and February 25, 1997, by telephone. The Office of the Chief Trial Counsel (OCTC) was represented by Deputy Trial Counsel Cecilia M. Horton-Billard. Respondent Jack R. Willis (Respondent) was represented by Terry McAuliffe, Esq., and by himself. Evidence was taken by stipulation, testimony of witnesses, and documentary exhibits. The matter stood submitted with the final brief on March 11, 1997.

For the reasons hereafter stated, Respondent is found culpable of the disciplinary charges alleged against him, and

it is recommended that he be suspended from the State Bar for one year, suspension stayed, and be placed on probation for two years with conditions including thirty days actual suspension, Ethics school, additional classes in professional conduct, and reporting requirements.

JURISDICTION

Respondent was admitted to the State Bar of California on January 9, 1969.

FINDINGS OF FACT

In 1987 Ms. Mary Day had a personal injury action against defendants insured by 20th Century Insurance Company (20th Century) and was represented by the law firm of Rentzer & Rentzer. In March 1987 she discharged Rentzer & Rentzer and retained respondent. Rentzer & Rentzer supplied Ms. Day's file to Respondent. It contained a copy of the retainer agreement between Rentzer & Rentzer and Ms. Day, signed by Ms. Day but not by a representative of the firm.

On or about June 30, 1990, Respondent settled Ms. Day's action. On June 30, 1990, 20th Century issued a settlement draft in the amount of $33, 000 made payable to Ms. Day, Rentzer & Rentzer and Respondent.

Respondent wrote to 20th Century on July 10, 1990. He made several arguments contending that there was no properly asserted lien for attorneys fees in the case (apparently referring to a lien claim by Rentzer & Rentzer). He then made the following statement:

"Finally, Rentzer & Rentzer has entered into a

> bankruptcy based thereon, the only claim could be by the trustee and not by the partnership. That bankruptcy has been discharged, and the trustee has asserted no interest in the asset."

Respondent did not send a copy of this letter to Rentzer & Rentzer. As a result of Respondent's letter, 20th Century reissued a settlement draft made out to Ms. Day and Respondent only.

As respondent now acknowledges, his statements about the Rentzer & Rentzer bankruptcy were completely false.

Respondent contends that he mistakenly made the statements about Rentzer & Rentzer because, several years before, one of the principals in the firm, Robert Rentzer, had stated at a deposition in another matter that his prior law corporation had been liquidated. Respondent also contended that his belief that Rentzer & Rentzer was in bankruptcy was based on the fact that one Franklin Gary had filed for bankruptcy, and he was someone that Respondent associated with the Rentzer & Rentzer firm.

The deposition to which Respondent refers contains the following statements about Rentzer & Rentzer:

"Mr. Rentzer:

> . . . . .
>
> "You have also made the statement that there is a partnership between Robert D. Rentzer and Rentzer & Rentzer. That is an absolute

> misstatement. Robert D. Rentzer, a professional corporation, is in liquidation. Rentzer & Rentzer, a professional corporation, has no partnership with Rentzer & Rentzer whatsoever, and I am an employee of Rentzer & Rentzer and, therefore, there is absolutely no emotional involvement on my part in this case."

The professional corporation of Robert D. Rentzer never represented Mary Day. That corporation was never in bankruptcy; it was merely liquidated. Rentzer & Rentzer, which did represent Mary Day, had never filed for bankruptcy or liquidation and Respondent had never been advised that it had. Respondent did not contact anyone in July of 1990 to verify the status of Rentzer & Rentzer.

Respondent did produce a bankruptcy filing for Franklin Gary, which he had obtained from the bankruptcy court. The only mention of Mr. Gary in the record indicates that he might have once worked in the building vacated by the Robert D. Rentzer professional corporation.

When Respondent was advised that he was mistaken about the Rentzer & Rentzer bankruptcy, he wrote in 1992 to Mr. Rentzer "apologizing." Despite the fact that the letter states that Respondent has read the file concerning the matter and refers to the October 1987 deposition, this letter, too, misstates the facts. It claims that Mr. Rentzer had advised Respondent that the corporation representing Mary Day was in liquidation, and threatens legal action if Mr. Rentzer does not respond.

CONCLUSIONS OF LAW

The Amended Notice of Disciplinary Charges, filed October 16, 1996, alleges that by making misrepresentations in order to have the name of Rentzer & Rentzer removed from the settlement check, Respondent failed to use means consistent with the truth, in violation of section 6068 (d) of the Business and Professions Code, and committed an act of moral turpitude, in violation of section 6106 of the Business and Professions Code.

Respondent argues that he made a simple good faith mistake, relying on his recollection of the discussion of Rentzer & Rentzer's status at the deposition some three years before. He also argues that this matter is privileged under Civil Code section 47 (b). He also contends that this is simply a fee dispute between attorneys, with which this Court should not concern itself. (In the Matter of Respondent H (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234.)

The Court is unable to accept Respondent's contention that he made a reasonable, good faith mistake. There is absolutely nothing in the deposition transcript which could lead anyone to reasonably believe that Rentzer & Rentzer was ever in bankruptcy. It does not mention the word bankruptcy; it merely states that a previous corporation was liquidated, which does not require or necessarily imply a bankruptcy proceeding. It distinguishes between the legal entities of Robert D. Rentzer and Rentzer & Rentzer. It expressly makes the point that Rentzer & Rentzer is an ongoing corporation of which Mr. Rentzer is an employee.

Further, the fact that Mr. Franklin Gary once filed bankruptcy has nothing to do with the legal status of Rentzer & Rentzer. Respondent had no explanation as to why he might associate the two, and there is no evidence that the two entities were ever in any way connected.

Respondent made no investigation before he made his assertions about Rentzer & Rentzer, which resulted in Rentzer & Rentzer's name being removed from a settlement check. Even after he claimed to have investigated, in 1992, he continued with his false assertions. Seen in the light most favorable to Respondent, his actions in making the false representations were grossly negligent and cannot be seen as a good faith but mistaken belief. Gross carelessness and negligence have been found to involve moral turpitude when they breach an attorney's fiduciary relationships. (Giovanazzi v. State Bar (1980) 28 Cal.3d 465 [handling of trust funds]; Simmons v. State Bar (1970) 2 Cal.3d 719, 729 [handling of cases].)

However, the Court was convinced by Respondent's testimony at trial that his misrepresentations about Rentzer & Rentzer were deliberate. In responding to cross-examination about the matter, Respondent was evasive and hypertechnical. For example, he first claimed that there was no retainer agreement between Ms. Day and Rentzer & Rentzer. Later he had to admit that he had a copy of a document "called" a retainer agreement which was signed by Ms. Day. Anyone so cautious and technical in his responses would not make a careless error about an issue of this much importance. The Court is convinced that Respondent's false assertions about Rentzer & Rentzer were deliberate and made for the purpose of depriving Rentzer & Rentzer of

whatever lien interest Rentzer & Rentzer might have had in Ms. Day's settlement.

Respondent relies on the Review Department opinion in In the Matter of Respondent H, supra, 2 Cal. State Bar Ct. Rptr. 234, for the proposition that this Court should not interpose itself into a simple fee dispute between attorneys. In Respondent H, the attorney notified previous counsel that he would sign counsel's name to a settlement check if counsel did not respond. Counsel did not respond and the attorney had his staff sign the check, deposit it in trust, and make appropriate disbursements. He disputed the other attorney's fees and the matter was later settled. The matter was characterized as a "feud" between attorneys.

The difference between Respondent H and this matter is the lack of concealment in the Respondent H case. The attorney therein communicated directly with the attorney with whom he had a dispute, and took the actions he did because that attorney would not respond so that the client's settlement check could be cleared and disbursed. The hearing judge and the Review Department expressly found that no dishonesty was involved. In this matter, Respondent deliberately made no attempt to contact Rentzer & Rentzer and did not copy Rentzer & Rentzer with his letter to 20th Century. He made no attempt at all to resolve or defeat Rentzer & Rentzer's lien claim by notifying that firm of the first settlement draft; instead all his effort went to having their name removed from the draft without their knowledge.

It is true that this Court has little interest in asserting itself into fee disputes between attorneys. Were the actions taken by Respondent simply truthful arguments about the

merits of a fee lien, this case would have never arisen. But they were not. They were deliberate misrepresentations which were inconsistent with Respondent's obligation as an attorney, dealing with a defendant insurance company, to use only means consistent with the truth, and to refrain from acts of moral turpitude. Respondent, thus, willfully violated Business and Professions Code sections 6068 (d) and 6106 by clear and convincing evidence.

Respondent contends that his statements were privileged under Civil Code section 47 (b). That code section protects statements made in the course of litigation from being the basis for later tort liability for defamation or intentional infliction of emotional distress. It does not protect an attorney from discipline for the use of false statements. Even assuming that Respondent's post-settlement letter was written "in the course of litigation," Civil Code section 47 (b) does not relieve Respondent from his obligation to use only methods consistent with the truth.

Finally, Respondent reasserts but does not reargue at length his position that section 6106 of the Business and Professions Code and the State Bar Court itself are unconstitutional. Those issues have already been the subject of previous rulings by this Court and the Review Department on interim appeals. Respondent's record is complete and his arguments preserved for the purposes of any later appeal.

AGGRAVATION AND MITIGATION

In aggravation, Respondent has a history of prior discipline. In order no. S027362, the Supreme Court ordered Respondent suspended from the practice of law for 60 days,

stayed, and placed on probation for one year with conditions. The misconduct involved the handling of client matters in four separate matters. (See standard 1.2 (b) (I) of the Standards for Attorney Sanctions for Professional Misconduct [standards].)

There was also harm to Mr. Rentzer in that he was deprived of his right to timely assert his lien in the case, although he was eventually paid. (Standard 1.2 (b) (iv).)

In mitigation, Respondent testified that during the period of time in which the misconduct in this matter occurred, he suffered from a serious illness and was also in three car accidents which caused physical injuries and pain. He claims that the stress from these matters caused or contributed to the misconduct herein. Although the Court is sympathetic to Respondent's health problems, he provided no expert testimony that those problems caused or contributed to his misconduct, as required by standard 1.2 (e) (iv). The Court is unable to accept the argument that physical problems of the type suffered by Respondent caused him to so lose his moral bearings that he would make a deliberate misrepresentation, as has been found. His physical problems have therefore not been found to be mitigating.

Respondent also testified about his extensive pro bono legal work and work in the community and in legal associations. Although Respondent has not engaged in this type of community service quite as extensively since his illness and other physical problems, it is entitled to some weight as showing good moral character. It is considered as a mitigating factor.

Respondent also presented testimony from a diverse group of five attorneys and two former clients who expressed their confidence in Respondent's good moral character. Although not all of these persons knew Respondent other than professionally and some seemed unclear about the exact nature of Respondent's prior discipline, their opinions have been given some weight in mitigation under standard 1.2 (e) (vi).

APPROPRIATE LEVEL OF DISCIPLINE

Under the standards and case law, an act of misrepresentation could warrant discipline ranging from suspension to disbarment. (Standards 2.3 and 2.6; Drociak v. State Bar (1991) 52 Cal. 3d 1085.)

OCTC requests that Respondent be suspended for two years, stayed, with a ninety-day actual suspension and extensive conditions of probation. Respondent requests an admonition, but in any case suggests that an actual suspension longer than thirty days is not warranted.

This Court considers a stayed suspension, coupled with probation and a short actual suspension, to be the appropriate discipline in this case. If Respondent had no prior discipline, the Court would not have found it necessary to impose any actual suspension. However, under the standards, suspension is deemed appropriate, and given the aggravating factors and relatively lesser showing of mitigation, the Court finds no basis to deviate from the standards. It is hoped that the period of probation will convince Respondent of the absolute necessity of abiding by all the rules of professional conduct, and particularly of

employing in his practice only means consistent with the true facts of any situation in which he is involved.

RECOMMENDED DISCIPLINE

Based on the foregoing, the Court hereby recommends that Respondent, **Jack R. Willis**, be suspended from the practice of law for one year, that execution of the order of suspension be stayed, and that Respondent be placed on probation for two years, upon the following conditions:

1. That Respondent shall be actually suspended from the practice of law in the State of California during the first 30 days of his probation;

2. That, during the period of probation, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct of the State Bar of California;

3. That, during the period of probation, Respondent shall report not later than January 10, April 10, July 10, and October 10 of each year, or part thereof, during which the probation is in effect, in writing, to the Probation Unit, Office of Trials, Los Angeles, which report shall state that it covers the preceding calendar quarter or applicable portion thereof, certifying by affidavit or under penalty of perjury (provided, however, that if the effective date of probation is less than 30 days preceding any of said dates, Respondent shall file said report on the due date next following the due date after said effective date):

(a) in his first report, whether he has complied with all provisions of the State Bar Act , and

Rules of Professional Conduct since the effective date of said probation;
(b) in each subsequent report, whether he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period;

(c) provided, however, that a final report shall be filed covering the remaining portion of the period of probation following the last report required by the foregoing provisions of this paragraph certifying to the matters set forth in paragraph (b) thereof;

4. That, subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of Trials which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with these terms of probation;

5. That Respondent shall promptly, and in so event after more than 10 days, report to the membership records office of the State Bar and to the Probation Unit, Office of Trials, Los Angeles, all changes of information, including current office or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

6. That within one year of the effective date of the Supreme Court order in this matter, Respondent shall attend the State Bar Ethics School, which is held periodically

at the State Bar of California (555 Franklin Street, San Francisco, or 1149 S. Hill Street, Los Angeles) and take and pass the test given at the end of such session and provide satisfactory proof of attendance to the Probations Unit, Office of Trials, Los Angeles;

7. That, within one year of the effective date of the Supreme Court Order in this matter, Respondent must attend no less than six hours of courses which are California Mandatory Continuing Legal Education approved in law office management, attorney/client relations and/or general legal ethics. Respondent must provide satisfactory proof of attendance to the State Bar Probation Unit within said one year;

8. That the period of probation shall commence as of the date on which the order of the Supreme Court imposing discipline in this matter becomes effective; and

9. That, at the expiration of the period of this probation, if Respondent has complied with the terms of probation, the order of the Supreme Court suspending Respondent from the practice of law for a period of one year shall be satisfied and the suspension shall be terminated.

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners within one year from the effective date of the Supreme Court's order and furnish satisfactory proof thereof

to the Probation Unit of the Office of Trials within said year.

COSTS

The Court recommends that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and that those costs be payable in accordance with section 6140.7 (as amended effective January 1, 1997).

Dated: March 17, 1997

Nancy Roberts Lonsdale
NANCY ROBERTS LONSDALE
JUDGE OF THE STATE BAR COURT

APPENDIX B-1

APPENDIX B-1

Law Offices of
Jack R. Willis
Telephone (213) 465-6634

Mailing Address:
P. O. Box 93-3003
Los Angeles, California 90093

7060 Hollywood Boulevard
Penthouse Suite 1210
Los Angeles, Ca. 90028

July 10, 1990

BOLLINGTON, STILTZ, BLOESER & CURRY
21900 Burbank Blvd., Suite 250
ATTN: Christopher F. Johnson, Esq.
P. O. Box 4100
Woodland Hills, CA 91365

RE: Day v. Silva & Diamond
Attorney Fee Lien

Dear Mr. Johnson:

As I indicated to you, an attorney's lien is created in a contingency fee contract by the use of the word lien. Norman v. Berney (1965) 45 Cal.Rptr. 467, 235 Cal.App.2d 424; Gelfand, Greer, Popko & Miller v. Shivener (1972) 105 Cal.Rptr. 445, 30 Cal.App.3d 364. A contract merely providing for a contingent fee does not create a lien. McGown v. Dalzell (1925) 236 Pac. 941, 72 Cal.App. 197.

If there is an express agreement of the parties, when an attorney is discharged, a lien is created in his favor. In that instance, the discharged attorney is entitled to the reasonable value of his

services. Fracasse v. Brent (1972) 6 Cal.3d 784, 100 Cal.Rptr. 385, 494 P.2d 9. The reasonable value of the attorney's services is determined by the amount of time spent on the case, the difficulty of the issues resolved, and the result obtained for the client. Once an attorney has been terminated, he is no longer on a contingency fee.

Business and Professions Code §6148, which deals with contracts based on an hourly rate, states that the hourly rate of the attorney should be specified, the nature of the legal service to be provided to the client, and the respective responsibilities of the attorney and client elaborated. Further, a lien is an equitable provision, and for the a ttorney to seek equity, he must do equity. For the attorney to seek his reasonable value, he must provide what his hourly rate is and the amount of time he spent on the file.

As can be seen from the above mentioned, in order for a lien to be valid:

1. There must be a specific written agreement therefor. *McGowan v. Dalzal* (1925) 6 P.941, 72 Cal.App. 197). You have not been provided with a copy of any such agreement; and
2. Pursuant to Business & Professions Code Section 6148 and equitable concepts (supra), the attorney must specify the nature of the legal services provided; and
3. Failure to set forth time and charges, means the lien has no value. A zero value lien is no lien at all. (You have not been provided with a specification of services rendered, issues resolved, time expended, and reasonable hourly rate.)

Finally, Rentzer & Rentzer has entered into a bankruptcy. Based thereon, the only claim could be by the trustee and not by the partnership. That bankruptcy has been discharged, and the trustee

has asserted no interest in the asset.

In view of all of the above mentioned, I have returned the check delivered to this office with Rentzer & Rentzer's name on it herewith. If your principal will issue a check to this office and my client only, I will indemnify it against any claims by Rentzer & Rentzer, and hold them harmless by defending any claims made by Rentzer & Rentzer in regard to the matter.

Thank you very much for your prompt attention to this matter.

LAW OFFICES OF JACK R. WILLIS

/s/

By: Jack R. Willis
Attorney at Law

JRW/sr
day\johnson6.let

APPENDIX B-2

APPENDIX B-2

Law Offices of
Jack R. Willis
Telephone (213) 465-6634

Mailing Address:
P. O. Box 93-3003
Los Angeles, California 90093

7060 Hollywood Boulevard
Penthouse Suite 1210
Los Angeles, Ca. 90028

September 17, 1992

Robert D. Rentzer, Esq.
5445 Balboa Boulevard, #113
Encino, CA 91316

RE: My Client: Mary Day
Date of Loss: 7/24/86

Dear Mr. Rentzer:

I have now had time to read the file in regard to the above-mentioned. On October 9, 1987 you represented to this office that the corporation allegedly retained by Mary Day to represent her was in liquidation. If I wrongfully assumed that this liquidation was a bankruptcy, I apologize.

In an case, having dealt with that, none of your letters deals with the substance of the issues raised in my letter to 20th Century of July 10, 1990. Please do so in writing. If you fail to comply with the request herein, and therein, appropriate legal action will be taken.

Thank you very much.

Sincerely,

LAW OFFICES OF JACK R. WILLIS

/s/

By: JACK R. WILLIS
Attorney at Law

JRW:elb

cc: 20th Century Ins. Co.
20750 Ventura Blvd.
Woodland Hills, CA 91364
Attn: Kevin Goode
File No: WH3463345-23

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